

REMARKS/ARGUMENTS

Claims 34 to 62 remain in this application. Claims 1 to 33 have been cancelled, without prejudice. Claim 58 has been amended to more clearly define the invention.

Claims 34 to 46 and 48 to 62 have been rejected under 35 U.S.C. 103(a) as being obvious over Fry et al. U.S. Patent No. 4,614,680 (Fry) in view of Arendt et al. U.S. Patent No. 5,990,214 (Arendt). Below the middle of page 3 of the Office Action mailed June 27, 2005 (the "latest Office Action"), the Examiner takes the position that

"the exact texture height to vertical [sic, horizontal] distance of the surface texture is deemed to be a result effective variable with regard to the desired aesthetic effect. It would require routine experimentation to determine the optimum value of a result effective variable, such as texture height to vertical [sic, horizontal] distance, in the absence of a showing of criticality in the claimed texture height to vertical [sic, horizontal] distance. One of ordinary skill in the art would have been motivated by [sic, to(?)] optimize the texture height to vertical [sic, horizontal] distance in order to create different aesthetic effect, such as differential texture and gloss levels."

Citations omitted. The claimed texture height to horizontal distance defines a very fine texture. If one of ordinary skill in the art were to optimize ("make the best or most effective use of") the texture height to horizontal distance, he would not necessarily be led to make a very fine texture, i.e. a very fine texture is not necessarily the best or most effective texture. As held by the Court of Appeals for the Federal Circuit in *In re Fine*, 837:

"The PTO has the burden under section 103 to establish a *prima facie* case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the

relevant teachings of the references. This it has not done. The Board points to nothing in the cited references, either alone or in combination, suggesting or teaching Fine's invention.

(Citations omitted.) However, there is no teaching or suggestion in Fry or Arendt of a very fine texture. In fact, there is no indication that a very fine texture can be achieved by the Fry process, which requires drawing a vacuum on the film 19 to form the top layer 12 (see column 5, lines 4 to 21), and which can be obtained by the present process of applying a melt processable resin to a previously fine textured substrate. Unless the Examiner can point to some teaching or suggestion in the prior art that the process of Fry can produce a very fine textured wear layer, independent claims 34, 36, 40, 42, 46 and 59, which claim specific textured height differences over no more than 20 mils horizontal distance must be allowed.

Near the top of page 4 of the latest Office Action, the Examiner takes the position that

“Arendt also discloses that the plasticizer increases the viscosity of the resin (*col. 8, lines 49-58*). Therefore, the exact viscosity of the melt processable composition is deemed to be a result effective variable with regard to the melt processing aid. It would require routine experimentation to determine the optimum value of a result effective variable, such as viscosity, in the absence of a showing of criticality in the claimed viscosity. One of ordinary skill in the art would have been motivated to optimize the viscosity of the melt processable composition depending on what type of aids were needed.”

Italics in original, citations omitted. However, again the method of manufacture of Fry is not the same as that of the present invention. Optimizing the viscosity of the Fry process, which requires drawing a vacuum on the film 19 to form the top layer 12 (see column 5, lines 4 to 21), would not necessarily yield the claimed viscosity, which yields the fine

textured wear layer by applying a melt processable resin with the claimed viscosity over a previously fine textured substrate. There is no teaching or suggestion that the optimized viscosity of Fry process is the same as for the present process. Without such a teaching or suggestion claims 36, 42 and 59 must be allowed.

If the Examiner disagrees, she is respectfully requested to explain where in the cited art there is a teaching or suggestion of forming a textured wear layer with a resin of the claimed viscosity, or if the rejection is based on facts within the personal knowledge of the Examiner, support in the form of an affidavit is requested, in accordance with MPEP section 707. Without such support, independent claims 36, 42 and 59, which require the viscosity of the melt processable composition to be between about 4,500 to about 70,000 poise at some temperature between 225°F and 425°F must be allowed.

Claim 48 requires the melt processable resin to comprise a general purpose polyvinyl chloride resin. This is a specific type of resin that yields the claimed fine textured surface covering. Neither fry nor Arendt teach or suggest this resin. Therefore, claim 48 is allowable over Fry and Arendt.

In similar manner, claim 52 requires a fibrous material adjacent the texture surface. The substrate of Fry is not fibrous and there is no teaching or suggestion in Arendt of a fibrous substrate. Therefore, claim 52 is allowable over Fry and Arendt.

Claim 54 requires the textured substrate to comprise a particulate material adjacent the textured surface. Claim 55 requires specifically listed particulate material. Neither fry nor Arendt teach or suggest a particulate material. Therefore, claims 54 and 55 are allowable over Fry and Arendt.

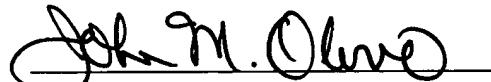
Claim 57 requires the textured substrate to comprise a chemical embossing inhibitor or accelerator. These components yield a chemically embossed substrate. Claim 58 requires the concentration of the chemical embossing inhibitor or accelerator to be uniform in the textured substrate adjacent the embossed area and different from the concentration in the non-embossed area.

Fry teaches away from chemical embossing. See column 2, lines 31 to 35. Arendt does not teach or suggest chemical embossing. Therefore, claims 57 and 58 are allowable over Fry and Arendt.

All of the rejections to the independent claims have been met and Attorney for Applicants submits that all the claims are in a condition for allowance. Therefore, a timely Notice of Allowance is earnestly solicited.

Respectfully submitted,

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John M. Olivo
Reg. No. 51,004
Attorney for Applicants

Armstrong World Industries, Inc.
P.O. Box 3001
Lancaster, PA 17604
(717) 396-2629 (Telephone)
(717) 396-6121 (Facsimile)